STATE OF MICHIGAN

COURT OF APPEALS

AFSCME LOCAL 1917 SUPERVISORS, ANTHONY O. RINNA, ROBERT A. PAPE, JOHN THOMAS, MICHAEL SLOAN, and JAMES HIGHTOWER,

Plaintiffs-Appellees,

v

CITY OF RIVER ROUGE,

Defendant-Appellant.

UNPUBLISHED
February 26, 1999

No. 203635
Wayne Circuit Court
LC No. 96-608621 AW

Before: Murphy, P.J., and MacKenzie and Talbot, JJ.

MEMORANDUM.

Defendant appeals by right an order of the Wayne Circuit Court directing the parties to arbitrate their dispute over the application of a "me too" clause in an expired collective bargaining agreement in light of certain retroactive pay raises that were granted after the collective bargaining agreement expired. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that the arbitrator lacks authority to hear the grievance, and therefore it was error for the circuit court to order the matter to be arbitrated. We disagree.

This Court employs a three-part inquiry to ascertain the arbitrability of an issue, focusing upon (1) whether there is an arbitration provision in the parties' contract, (2) whether the disputed issue is "arguably" or "on its face" within the arbitration clause, and (3) whether the dispute is expressly exempt from arbitration by the terms of the contract. Any doubts about the arbitrability of an issue should be resolved in favor of arbitration. *Burns v Olde Discount Corp*, 212 Mich App 576, 580; 538 NW2d 686 (1995), lv den 452 Mich 857 (1996); *Federal Kemper Ins Co v American Bankers Ins Co*, 137 Mich App 134, 139-140; 357 NW2d 834 (1984). In deciding whether the parties have agreed to submit a particular grievance to arbitration, we are not to rule on the potential merits of the underlying claims. *Amtower v Willliam C. Roney & Co (On Remand)*, ___ Mich App ___; ___ NW2d ___ (Docket No. 211717; issued 10/16/98), slip op at 5.

Here, there is an arbitration provision in the parties' collective bargaining agreement in effect between July 1, 1986 and June 30, 1990. There may also be arbitration clauses in the parties' subsequent collective bargaining agreements as well, but since the full text of the parties' subsequent contracts is not contained in this record, we focus our inquiry upon the contract in effect between July 1, 1986 and June 30, 1990 only. The grievance in question is also at least "arguably" or "on its face" within the arbitration clause of the collective bargaining agreement in effect between July 1, 1986 and June 30, 1990, and there is nothing in the terms of that contract which expressly exempts the dispute from arbitration.

Although the collective bargaining agreement expired on June 30, 1990, well before the retroactive pay increase and the filing of the grievance in 1992, the mere fact of expiration does not necessarily affect the arbitrability of the grievance. For example, the right to grievance arbitration may survive the expiration of a collective bargaining agreement where an action taken after expiration infringes a right that accrued or vested under the expired agreement. *Gibraltar School Dist v Gibraltar MESPA-Transportation*, 443 Mich 326, 348; 505 NW2d 214 (1993) (quoting *Litton Financial Printing Div v NLRB*, 501 US 190; 111 S Ct 2215; 115 L Ed 2d 177 [1991]). Defendant offers no argument as to whether this grievance involves an accrued or vested right or any other argument relevant to the issue of post-expiration arbitration.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ William B. Murphy
/s/ Michael J. Talbot